

Message Text

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ACTION EB-08

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FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC PRIORITY 5563
INFO AMCONSUL RIO DE JANEIRO

LIMITED OFFICIAL USE SECTION 1 OF 2 BRASILIA 0235

E.O. 11652: N/A
TAGS: EWWT, BR
SUBJ: BRAZILIAN SUPREME COURT DECISION ON SHIPPING (MARITIME
AFFAIRS)

REF: STATE 003863

FOLLOWING MESSAGE PREPARED BY MARATT RIO DE JANEIRO:

1. REQUEST FOR THE EMBASSY TO FILE A FORMAL PROTEST
WITH THE GOB HAS BEEN PRESENTED TO THE CONSULATE GENERJL
OF RIO DE JANEIRO BY DELTA STEAMSHIP LINES, THROUGH
ITS RIO MANAGER, CELSO GUIMARAES. NEITHER MOORE-MCCORMACK
LINES NOR PRUDENTIAL LINES, FOR WHICH MOORE-MCCORMACK
ACTS AS AGENT HERE, HAVE REQUESTED SIMILAR ACTION. IN A
TELEPHONE CONVERSATION WITH AN OFFICER OF MOORE-MCCORMACK
LINES ON JANUARY 10, WE LEARNED THAT THE COMPANY HAS
ITS ATTORNEYS WORKING ON THE CASE IN RIO AND IN BRASILIA.
HOWEVER, HE STATED THAT THE SITUATION IS STILL SO CONFUSED
AND UNCERTAIN THAT TO FILE A PROTEST AT THIS TIME WITHOUT
KNOWING ALL OF THE FACTS INVOLVED WOULD BE "VERY DANGEROUS."
HE ALSO SAID THAT THERE IS NO QUESTION THAT POLITICS AND
CORRUPTION ARE INVOLVED AND THAT ANY PRECIPITOUS ACTION
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TAKEN BEFORE ALL OF THE FACTS ARE KNOWN, COULD BE EXTREMELY
DETRIMENTAL TO THE LINES CONCERNED.

2. THE COMPLAINT CENTERS ON LAW NO. 2146 WHICH WAS EFFECTIVE
BETWEEN DECE R, 1953, AND APRIL, 1966, A PERIOD OF APPROX-
IMATELY THIRTEEN YEARS. SUBJECT LAW MADE IT OBLIGATORY FOR
STEASHIP COMPANIES OPERATING IN BRAZIL TO BOOK CARGOES

EXCLUSIVELY THROUGH A GROUP OF BRAZILIAN SHIPBROKERS. THROUGH PROCEEDINGS ORIGINATING IN THE FEDERAL COURT IN THE STATE OF SANTA CATARINA, A DECISION WAS RENDERED BY THE SUPREME COURT (SUPREMO TRIBUNAL FEDERAL) FAVORING THE SHIPBROKERS, WHICH DECISION IS BASED UPON THE BOOKING "EXCLUSIVITY" PROVISION OF THE LAW PROVIDING FOR THE PAYMENT OF BROKERAGE REGARDLESS OF WHETHER OR NOT BOOKING SERVICES WERE ACTUALLY PERFORMED. AS WE UNDERSTAND THE SITUATION, THE SUPREME COURT'S RULING RECOGNIZES THE RIGHTS OF SHIPBROKERS TO RECEIVE THE COMMISSION AS SET FORTH UNDER THE LAW FOR THE PERIOD OF THE LAW'S EFFECTIVENESS. HOWEVER, THE SUPREME COURT MERELY RULED ON THE MERITS OF THE CASE, NOT ON THE AMOUNT OF DAMAGES NOR ON THE MANNER IN WHICH DAMAGES SHOULD BE COMPUTED, WHICH IT LEFT TO THE ORIGINATING COURT AT SANTA CATARINA FOR DETERMINATION.

3. REFUSAL OF THE VARIOUS STEAMSHIP COMPANIES TO PAY CARGO BROKERAGE FEES IN AMOUNTS OF BETWEEN ONE AND TWO AND ONE-HALF PERCENT AT THE PORTS OF ITAJAI, RIO DE JANEIRO, SANTOS AND OTHER PORTS, RESULTED IN INITIATION OF THE ACTION AT ITAJAI (STATE OF SANTA CATARINA), ABOVE CITED, WHERE THE COURT RULED IN FAVOR OF PETITIONERS. THE ORDER WAS THEN TRANSFERRED TO THE RIO DE JANEIRO DISTRICT FOR ENFORCEMENT. DELTA FEARS THAT PRECEDENCE HAS ALREADY BEEN SET IN THE ORDER TRANSFERRING THE ACTION FROM ITAJAI TO RIO DE JANEIRO SO THAT ADDITIONAL TRANSFERS TO SANTOS AND OTHER PORTS OF BRAZIL MUST BE ANTICIPATED.

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PATED SHOULD THE ORIGINAL ORDER BE ALLOWED TO STAND UNCHALLENGED. UNDER THE CIRCUMSTANCES, IT IS ESTIMATED THAT DAMAGES COULD AMOUNT TO BETWEEN TWO AND THREE HUNDRED MILLION CRUZEIROS (100/200 MILLION DOLLARS).

4. DELTA ALLEGES THAT UNDER THE COURT DECISION DAMAGES HAVE BEEN ARBITRARILY ASSESSED AT ABOUT SIXTY MILLION CRUZEIROS (FOUR MILLION DOLLARS). DELTA ALSO ALLEGES THAT SINCE THERE IS ALMOST A COMPLETE LACK OF MANIFESTS IN EVIDENCE FOR THE THIRTEEN-YEAR PERIOD INVOLVED, THE COURT ERRED IN ACCEPTING THE SIXTY MILLION CRUZEIRO FIGURES OF ITS EXPERTS.

5. DELTA LINES (AS WELL AS OTHER LINES NAMED IN THE COURT'S ORDER) HAVE ALREADY HAD ATTACHED, OR LIENS PLACED UPON, SOME OF ITS PROPERTY INCLUDING OFFICE FURNITURE, SUPPLIES AND EQUIPMENT, AND A COMPANY AUTOMOBILE. DELTA CLEARLY INTIMATED THAT HAD IT POSSESSED REAL PROPERTY, THAT TOO WOULD HAVE BEEN SUBJECT TO THE COURT'S ORDER. ADDITIONALLY, ACCORDING TO THE DELTA REPRESENTATIVE, A NUMBER OF ITS BANK ACCOUNTS (AS WELL AS THOSE OF OTHER STEAMSHIP COMPANIES) HAVE BEEN FROZEN. COPY OF THE COURT'S ORDER WHICH IS BEING FURNISHED TO YOU IMMEDIATELY WILL ATTEST TO THIS ALLEGATION.

6/ THE JUDGMENT RENDERED WAS "IN SOLPDUM" WHICH PROVIDES THAT EACH INDIVIDUAL STEAMSHIP COMPANY NAMED IN THE COURT'S ORDER IS BOUND FOR THE SNTIRE AMOUNT. FROM INFORMATION WHICH WE HAVE BEEN ABLE TO OBTAIN HERE, BETWEEN NINETEEN AND TWENTY-TWO STEAMSHIP LINES ARE INVOLVED IN THE INITIAL ACTION. THESE LINES REPREENT VESSELS OF THE UNITED STATES, BRAZIL, DENMARK, FINLAND, FRANCE, GERMANY, HOLLWND AND SWEDEN. OF PARTICULAR INTEREST IS THE FACT THAT LLOYD BRASILEIRO, THE STATE-OWNED STEAMSHIP LINE, IS NOT A PARTY TO THE ACTION.

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TO SECSTATE WASHDC PRIORITY 5564
INFO AMCONSUL RIO

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7. WE REITERATE THAT THERE IS A GENUINE FEAR THAT SHOULD THE PROCEEDINGS BE SUCCESSFULLY ENFORCED AGAINST THE LINES PARTIES TO THE PRESENT ACTION, THEREBY REQUIRING PAYMENT OF THE SIXTY MILLION CRUZEIROS, PRECEDENCE WILL HAVE BEEN ESTABLISHED THEREBY ENCOURAGING THE FILING OF ADDITIONAL SUITS IN OTHER BRAZILIAN PORT AREAS. DELTA IS OF THE OPINION THAT IT IS IMPERATIVE THAT THE MATTER BE CLARIFIED AND STOPPED BEFORE IT SPREADS TO OTHER ARAS.

8. DELTA BELIEVES THAT THE COURT ERRED IN RULING THAT EACH LINE BE INDIVIDUALLY RESPONSIBLE FOR THE ENTIRE SIXTY MILLION CRUZEIROS AND THAT "THE AMOUNT ARRIVED AT IS EXCESSIVE ... AND NO BASED ON REALISTIC FIGURES BUT ON AN ILLOGICAL ESTIMATE." ACCORDING TO DELTA'S ATTORNEY, THERE IS ONE REMEDY AVAILABLE, ALTHOUGH THERE IS NO ADMINISTRATIVE GOVERNMENT ACTION WHICH CAN OVERRULE A SUPREME COURT DECISION. THE AVAILABLE REMEDY IS A PROCEEDING UNDER AN "ACAO RECISORIA" (ACTION TO ANNUL THE SUPREME COURT DECISION), WHICH ACTION WAS BEING PREPARED FOR

FILING ON JANUARY 9, 1978, WITH THE SUPREME COURT AT BRASILIA.
THIS ACTION WILL PETITION FOR ANNULMXNT OF SUBJECT DECISION.
FYI: DELTA STRESSED THAT THE ACTION WAS NOT INITIATED PRIOR
TO JANUARY 9 BECAUSE ON JANUARY 9 THE COURT RESUMEDFHEARINGS,
HAVING BEEN IN RECESS SINCE THE DECISION IN THIS CASE. IF
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THE ACTION NOW BEING BROUGHT BY THE NATIONAL ASSOCIATION OF
STEAMSHPP LINES AND AGENTS (CNNT) ON BEHALF OF DELTA ANDD
THE OTHER STEAMSHIP LINES PARTIES TO THE COURT'S ORDER IN
THE BRASILIA COURT IS SUCCESSFUL, DELTA CVNTENDS THAT IT
WILL "STOP THE ATTACHMENTS ... IMMEDIATELY UNTIL ANOTHER
DECISION CAN BE TAKEN BY THE COURT IN SANTA CATARINA.

9. DELTA HOLDS THAT ALTHOUGH THE COURT MAY HAVE DECIDED
PROPERLY ON THE MERITS OF THE CASE, I.E., THAT THE BROKERS
ARE ENTITLED TO THE COMMISSION AS SPECIFIED UNDER THE LAWQDURING
THE PERIOD OF ITS EFFECTIVENESS, THE COURT ERRED IN THE AMOUNT
OF DAMAGES AWARDED. APPARENTLY WHAT DELTA IS SEEKING IU A
NON-MONETARY JUDGMENT OR, IF SUCH IS UNOBTAINABLE, A JUDGMENT
IN A NOMINAL AMOUNT.

10. EMBASSY'S REPORT ON SUBJECT FOLLOWS IN SEPTTEL.
JOHNSON

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